192

Department of Land Rec Sett

OFFICE Board of Rev

STATION Chepauk

Mc No. 1012

8-4-29

Dated

Given for copying

Copied

Examined

Signed

Given for despatch

Despatched

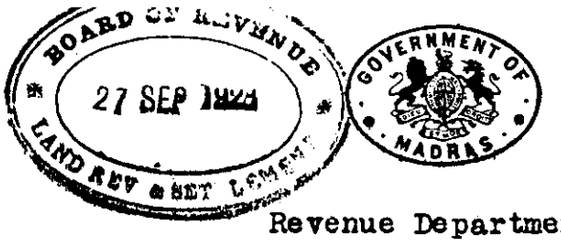
Indexed

To be destroyed on

(SUBJECT.)

Resurvey and Resettlement
Sixth Kanara Dt Kumaki & assessed
waste lands Treatment of despatch
for Communicated

Dis.	No.	Department. / Series.	Date.	Dis.	No.	Department. / Series.	Date.
3112 12 21-9 P. 1357	16 20.5.27						



Revenue Department.

Memorandum No. 2768 E/28-1, dated the 24th September 1928.

****

Survey - Resurvey - South Kanara - Kumaki lands - Grievances of land holders - Letter from M.R.Ry. K. R. Karant Avl., M.L.C., dated 13th September 1928 and from the Honorary Secretary, Kanara Land Holders Association, dated 20th September 1928 - G.O.No. 2044 Revenue, dated the 3rd September 1928

(put up **** for another file)

A copy of the letter from M.R.Ry. K.R. Karant Avl., M.L.C dated 13th September 1928 together with an extract from the Memorandum on the resurvey of the old Kasaragod taluk prepared by the Working Committee of the Land Holders' Association, South Kanara, relating to "demarcation of Kumaki" are forwarded to the Board of Revenue. The Board is requested to state :-

(i) whether back assessment for the "Kumki" land enclosed by walls was collected as stated in the memorandum and in the letter from Mr. Karant read above and if so why it has been levied for 25 years in spite of the instructions in Boards Proceedings 78 dated 8th April 1909.

(ii) (ı) from whom and under what circumstances back assessment was collected.

(ı) The Board is also requested to state whether 'Kumki' lands are assigned compulsorily to ryots 'whether by way of resurvey or by the initiation of fresh darkhast proceedings' as complained of in the letter from Mr. Karant read above. The attention of the Board f Revenue is in this connection invited to the orders of the Government issued in G.O.No.865 Revenue, dated 7th May 1927.

Mangalore,
Septr. 13, 1928.

From

N.R.Ry.K.R.Karant, Avl., B.A.,LL.B.,M.L.C.,
Vakil, M a n g a l o r e.

To

D.N.Strathie, Esq.,
Secretary to Government,
Revenue Department,
Fort St.George, Madras.

Sir,

Subject: G.O. No.Mis. 2044 (Revenue Dept.) dated 3rd September 1928.

In pursuance of the talk we had on the 8th instant I beg to state the point for the kind consideration of Government. But before doing so I desire to express my sincere gratitude to Government for their extremely just and sympathetic disposal of most of the points raised in the Memorandum of the Land-holders' Association

2. The only point that remains for disposal is the question of kumkis and waste lands referred to in paragraph V of the Memorandum. At the re-survey these were all surveyed and if it is only for the purpose of a compilation of list for reference for the use of Government the ryots can have no complaint. But the matter does not rest there. They are now going to be included in the pattas and the ryots are asked to pay back assessment and cesses at Re.0-1-9 per rupee for the past 25 years against their will. The Back Assessment Statements sent out to the villages contain such items. Now it is my humble submission that it is unjust to compel the ryot to take them on assessment and also compel him to pay the enormous back assessment aforesaid as all that the ryot enjoyed in the plot were what are known as kumki privileges. The nature of these is set out at length in paragraph V of the said Memorandum and I am sure Government are aware of them. Compelling the ryot to pay back assessment for 25 years would suppose that he enjoyed not merely kumki privileges but also the full rights of an absolute owner in them in the past. Now this is not true. For if there are palmyrah trees in them

used for extraction of toddy or jaggery he has been paying to Government annas 4 per tree called 'kumki fee' besides Rs. 3/- to the Excise Department. If tree growth was cut and removed in such a plot Government has been getting income on the fuel extracted which would not be the case if the plot were not kumki but really the owner's. Again, as Government may be aware in all these years he could not cut from it classified trees. The mere enclosing of the kumki by walls which are in almost all cases old and erected prior to settlement, though repaired from time to time, should not be deemed to be in contravention of his kumki privileges as without such enclosure it is impossible to conserve the tree and leaf growth within. To compel him therefore to take the plot on assignment would be to deprive him of his time-honoured kumki privileges and would be clearly unjust. The ryot has been wrongly made to pay the survey charges for the demarcation of such plots. But I would not press this point much in the face of the larger question aforesaid.

3. The Revenue Department here has initiated dharkast proceedings in similar cases. Government in the above G.O. appear to have dealt with this question in paragraph 1(e). But I take it that the full significance of the point has been overlooked.

4. In conclusion I beg of Government to deal with this question in the same just and liberal spirit with which they have dealt with the other points and cancel the levy of back assessment and cesses and also the compulsory assignments of these to the ryots whether by way of resurvey or by the initiation of fresh darkhast proceedings. If any of the above points require any explanation from me I shall be glad to see the Hon.The Revenue Member and yourself when I go over to Madras for the Council sittings in October.

Yours sincerely,
Sd.K.R.Karant.

Copy to the Secretary, South Kanara,
Land-Holders' Association.

From the Honorary Secretary, Kanara Landholders' Association,, Ganapat Temple Street, Mangalore, dated the 20th September 1928.

Subject.- G.O.No.2044 Revenue Department dated 3-9-1928.

On behalf of the working Committee of my Association I desire to express our gratitude to Government for their just and sympathetic disposal of most of the points raised in our Memorandum dated the 7th May 1928. But as the orders received do not cover other points qually important, I beg to place the same before you for your kind consideration and immediate action, so that you may place them before the Government the subject regarding the assessment of Kumkies and waste lands. Other subjects will, we hope, also receive early attention, at the hands of Government and need not be further dilated upon for the present.

My working Committee is aware that Mr. K.R.Karant, M.L.C. on behalf of my Association had also a personal talk with you on this matter and he will be glad to see the Hon'ble Revenue Member and yourself to explain any points requiring explanations when the next Council sits next month. The other M.L.C. members of our Working Committee will also be glad to help on any points throwing light on this matter.

The subject of Kumki, and waste lands, have been referred to in paragraph V of our Memorandum dated the 7th May 1928. At the resurvey these have been all surveyed and if it is only for the purposes of compilation of a list for reference for the use of Government the ryots have no complaint. But the matter does not rest there. They are now to be compulsorily included in the pattas and ryots have been asked to pay back assessment with cesses at 1 anna nine pies per rupee for the past 25 years against their will. The back assessment statements sent out to the villages contain such items. Now it is our humble submission that it is highly unjust to compel a ryot to take these lands on assessment with 25 years' back penal assessment for these lands, the privileges and usufruct over which has been utilised for the better cultivation of assessed lands, from timeimmemorial and thus lead to a double tax for the cultivated lands. The Associati

begs to point out that the physical features and climate unlike those of the east coast, demand the conservation of waste land for leaf manure, fuel and water for agricultural purposes, unassessed for all time, unless and until the ryot is going to reclaim it and bring it under cultivation, when the ordinary law of the land prevailing from time immemorial till the last Settlement allowed the Government to claim its share of the produce as assessment.

The taxing of these wastes by compulsion therefore runs the risk of taxing cultivated land twice over, once for the cultivated land and again for the land which supplies leaf manure for cultivation. The Association submits further that this compulsory taxation would presuppose the existence of full proprietory rights over waste which the ryot claims but this the Government has been unwilling to concede except for taxation purposes. The Association thinks that this double position is unjust. The Government has been in case of individuals compelling the payment of the true tax over waste lands containing palmyra- Government's objection, if any, to the enclosure is unjust as this does not mean any reclaimation but only conservation of waste lands for conserving leaf manure by preventing cattle or strangers from trespassing and injuring the growth of leaf. The present scale of assessment at double the Presidency average for the same yield or less is pressing on the poor land-holders demands a sympathetic consideration at the hands of Government. The waste lands being appurtenant and inseparable from the cultivated land, would run the risk of being alienated to third parties by Government, if the ryot is unable to pay the penal assessment, and the chances of cultivated land becoming fallow by setting up of rival landholders by this compulsory assessment are great. The Association hopes to deal with the scale of assessment, in their general Memorial relating to the Settlement in due course, on account of the larger issue involved therein.

The Revenue Department has initiated darkhast proceedings in similar cases but Government in the above G.O. appear to have over-looked the same.

dealt with other points and cancel the levy of back assessment and cesses and also the compulsory assignment of waste lands, whether by way of re-survey or by the initiation of fresh darkhast proceedings.

Extract from the Memoranum on the Re-Survey of the Old Kassargode Taluq area by the Working Committee of the Land-Holders' Association, South Kanara, Mangalore:

The Working Committee of the South Kanara Land-Holders' Association begs to place the following Memorandum of grievances for favour of immediate consideration and action of the Government in respect of the Re-survey in the old Kassargode Taluq area of this district, and preliminary Settlement as the immediate consequence of this Re-survey.

V. Demarcation of Kumki.

From time immemorial, the land owners of this district have been enjoying kumki rights over the waste lands adjoining their cultivated lands. In truth they formed part and parcel of their wargs. But all such rights have been encroached upon and what little now remains unencroached to them is the exercise of kumki rights without payment of assessments. Under the kumki rules issued on 18th July, 1896 under Section 64 of the Madras Forest Act, 1882 "Kumki" is defined to be Government waste land within hundred yards of assessed land included in wargs formed prior to fasli 1276. Rule 11 lays down that the holder of the kumki may enjoy, free of charge, the usual privileges in respect of grazing cattle, of cutting and removing trees, timber and other forest produce for bona fide agricultural or domestic purposes in the village in which such kumki is situated, and that the aforesaid privileges can only be alienated with the land to which they are attached. In Government Order No.757-Rev. 25th August,1902 it is stated at page 101, para 126, that "semi proprietory right is conceded within the said limit for grazing cattle, collection of leaves for manure and sticks for fuel and fencing," that "kumkies are divided and enjoyed in separate portions by the individual land-holders."

Lease fee in kind. put-up (M) (since removed)

For the conservation of trees within such kumki and for the prevention of the entry of cattle into the adjacent paddy land or gardens, from times immemorial the ryots having been putting mud walls around such kumki. They are not of recent creation. Some of these walls are decades old. Without them no leaves for cultivation could be conserved inside. But at the Re-survey all such kumki lands as are enclosed by walls have been demarcated separately, their rough patta granted to the owner of the adjacent warg-land, but to the cultivating chalgeni tenant on that land; back assessment is levied and no notice is sent even to the owner. The Government is aware that the chalgeni tenant has no proprietory rights in the lands he cultivates and if the kumki land is to be served from the warg proper and assigned to him in the name of Re-survey, the Government may appreciate the hardship of the owner ---- inasmuchas the tenant is not bound to stick on the land, but may leave it at any time. The right of the wargdar to enjoy the kumki without payment of assessment which is the last vestige of his ancient proprietory rights on the waste land is also taken awav at one stroke. The collection of the back assessment for the kumki is multiplying this injury ten times.

The Association hopes that the Government will fully realise the gross iniquity of the measure and cancel all such demarcation, assessments and pattas and not interfere with the little kumki rights that yet remain.

A.S Creet,
Thro F. Section

Survey – Resurvey – South Kanara – Kumaki lands – Grievances of land holders – letters from M.A. by K R. Karanth and M.L.C and from the Hon'y Sec Kanara Land Holders association

1-15 Aug 10

Read again B.P. No. ——— dated ——— 192
" " 1357 Mis, dated 20-5-27 } Q
" " " 2110 dated 21-9-28 192

Register No. Q-4295, From the Govt, R.D Memo No. 2768, dated 24-9-1928.
/28-1 Chara 1 orig Govt memo on above and 192
Read above 1st 2 to be copied
" " " " " " " " 192

R 19-11-28 (S.S.O). RESOLUTION. Refee No. Q-4295/28-1 dated 1-10-1928
R 1-3

Exchange Rem (Q-5474/28)
Reply
Hr 30-11
Hr 1.12-

Forwarded to the S.S.O new No. IV Party for early remarks which should be submitted through the collector of South Kanara

M2 myself Sri
WS
3/10.

KG 1/10/28 CQ 1/10/28
Cus 29-9-28
JSH 9.10.28

In reply, please quote number, date and short

SETTLEMENT - DEPARTMENT.

Received ..... *Registered* .....

From (Name) A.R.Mac Ewen Esquire, M.C.,I.C.S.,

(Designation) Special Settlement Officer, Party No.4,

Post Box ..... (Station) CANNANORE

COLLECTOR'S OFFICE 10NOV1928 SOUTH KANARA

To The Secretary to the Commissioners of and Revenue & Settlement, Chepauk MADRAS.

Through the Collector of South Kanara, Mangalore.

Roc No. 524-1/Bte/8 dated 9th November 1928.

Sir,

SETTLEMENT - Resettlement - South Kanara - Kumaki lands - Representations of certain ryots - Board's ref. No. G.4295-28-1, dated the 1st October, 1928.

In dealing with the representations made by the Landholders' Association on the subject of kumaki, I do not think that it is necessary to deal at length with the nature of kumaki itself. The subject was thoroughly thrashed out at the settlement, and it has been made clear to the ryots that the use of kumaki land is a privilege granted by Government with a view to assisting the cultivation of kadim fields—not a right, as the Landholders' Association still terms it—,and that any extension or occupation into kumaki fields will be treated as an encroachment. But it does seem essential to start by repeating what has been the attitude of Government for many years past as the complaints of the Association turn on this very important question of the occupation of kumaki

Settlement Department has invented a new method of claiming unjust dues from the ryots is absolutely misleading. It is only because now, at resettlement, I am scrutinizing every field in every village with a view to collecting Government dues that have, for many years, not been paid to Government, that the agitation against my work has started The Settlement staff, in fact is now dealing in a short time with an increased number of cases of encroachments that are in all respects-similar to those that have been dealt with—and that without protest—by the Revenue officers during the last 20 years; and the only reason for the volume of the work that is now being carried through is that the village officers on the whole have not shown as much watchfulness as they might in the past. I submit that failure to "book" encroachments for a number of years does not estop Government, now that Government lands are being inspected in detail, from claiming their proper dues.

invariably followed the District practice and have limited their demand, whatever be the length of occupation. to a maximum of ten years back assessment. As regards this class of encroachment, then, the Association is misinformed.

4. A perusal of the representations of the ryots shows that the main point at issue is the levying of back assessment on kumaki land that is enclosed by walls. In the first place, I would invite the attention of the Board to G.O.No. 2166, Revenue, dated the 8th August, 1908, which forbids the enclosing of kumaki except with the permission of the Tahsildar or Deputy Tahsildar. (Previously, such permission had been in the hands of the potails, and it was found that this delegation of power had led to the abuse of kumaki privileges.) The ryots have without exception completely ignored the conditions laid down by Government; in the whole of the old Kasaragod Taluk, not a single ryot has produced evidence before my field staff to show that he has erected walls with the permission of the Revenue authorities; considering that the tendering of such evidence would at once call for a sympathetic consideration of any protest against the demand for back assessment, it is clear that the evidence does not exist. To start with, then, those ryots who have enclosed their kumaki have put themselves in the wrong.

On the next point I would at once join issue with the statements of the Association. They say that they wall in their kumaki solely for the "conservation of waste lands" by "conserving leaf manure, by preventing cattle or strangers from trespassing and injuring the growth of leaf" This is their pretext: their motive is entirely different. The abundance of green manure throughout the District is a feature that was stressed during the last settlement and it needs no further comment here; the damage done to the growth

by cattle--"strangers", I need hardly say, can climb walls if they are bent on mischief--is negligible. I submit that the motive behind this walling of the kumaki plots is twofold. First, the ryot still holds to the old idea, which Government have rebutted time and again, that his kumaki is his in the same sense as is his occupied land; he sees no reason to ask for permission to wall it in, and past failure to enforce the rule has fostered this attitude. Secondly, he hopes that gradually, as he finds time and funds, he will be able to push his permanent occupation further and further into the enclosure, and he hopes, relying on past experience, that this most obviously assessable occupation will again go unnoticed; if he can only avoid assessment at this stage of close scrutiny, he is not likely to be troubled in the matter again until next resettlement. If he is, later on, asked to pay for his encroachment, he can at the worst only be asked to pay back assessment for the years of occupation. Such is the attitude, I am led to think, of the ryots' representatives.

5. It is on occupation such as this, occupation that is bounded by a permanent wall, which the occupier intends to be the permanent boundary of his gradually-extending cultivation, that back assessment is and has been levied. During the Commissioner's recent tour in South Kanara, I took the opportunity of showing him a number of cases of kumaki encroachments, and I demonstrated to him that in many cases the ryots have not enclosed their kumaki land; the "damage" to such un-enclosed land is, to say the least of it, not so material as to meet the eye, a fact that lends weight to my argument on the motives of those ryots who do go to the trouble and expense of building substantial walls. Moreover, it is a patent fact that enclosures are far more common in the more settled areas, where

pressure on the land is greater and the ryots hava a greater incentive to "staking a claim" on land that might attract the notice of outsiders.

6. I have said above that occupation of kumaki land by gardens has never been charged back assessment for a longer period than 10 years. I suppose that the intention underlying this concession is to moderate the amount of the demand. Garden rate for 20 or 25 years on a substantial area of land is no small figure. The principle on which the Settlement staff have been levying back assessment for dry cultivation or ordinary (non-garden) occupation is that "ordinarily, in the words of B.P.78, dated the 8th April, 1909, the period is limited to 10 years; the only exceptions to this rule are cases where either the occupier admits that he has been in occupation for a longer period, or where there is absolutely indisputable evidence, such, for example, as the existence on the land of trees planted by the encroacher the age of which makes the period of his occupation clear. Even so, the ryot is given the benefit of the doubt in all but obvious cases. I have myself watched the orders passed in a large percentage of the cases of practically every village in the Taluk, and I can say without reservation that no ryot has been unfairly treated in this matter.

7. Government, further ask for information as to whether kumaki land is "compulsorily assigned" to the ryots. The allegation of the memorialists on this point is incorrect Enclosures in kumaki that existed before the old settlement are offered to the encroacher free of back assessment; if he does not wish to take up the land, he is not compelled to do so, but the Settlement staff furnish the Revenue officers with details in order that they may deal with the unauthorized encroachment. If the encroachment is done without permission and is subsequent to settlement, he is

offered the land on payment of back assessment. This assessment is Government's fair due for the period of enjoyment during which the ryot has escaped paying assessment, and payment of it is enforced in the same manner as sivoijama assessment in other Districts. Here too no compulsion is used; if the ryot does not consent to the assignment the case is brought to the notice of the Revenue officers. It seems hardly necessary to say that a man who has been in occupation of land adjoining his own back-yard for some time and has spent time and money on improving it is not going to give it up and leave it for assignment to others. It would have been of interest if the memorialists had quoted a number of concrete instances of ryots who, having had to pay back assessment under the law of the land, nevertheless were unwilling to take up formally land that has been under their enjoyment for years. If such cases do exist, they have not come to the notice of my field staff.

8. Lastly, Government ask from whom back assessment has been collected. It has been collected from the enjoyer, whoever he is. If a mulgar himself cultivates his land, the demand goes to him. If he has leased it out to a mulgenidar, the latter pays; it is the mulgenidar who, under Board's Standing Order No.XV, has the first claim to assignments in the kumaki attached to the occupied land that he enjoys. The fact that it is the tenant, not the mulgar, to whom occupied o enclosed kumaki land is first offered further demonstrates the view of Government that kumaki land is only regarded as being attached to the kadim land while it is in fact Government waste land, and that as soon as it ceases to be unoccupied waste it must be treated on exactly the same principles as sivoijama occupation in other Districts.

I have the honour to be,
Sir,
Your most obedient servant,

DESPATCHED
10 NOV 1928

S. Padmanabhan
For Special Settlement Officer

K.J. 9-11-28.

BOARD OF
3 DEC 1928
LAND REV. & SETTLEMENT

D.Dis. 8854-28. South Kanara Collector's Office,

Camp, Mudabidri, Dated 28-11-28.

From

G. W. Wells, Esquire, M.A., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue Settlement,

Madras.

Sir,

Survey - Resurvey - South Kanara - Kumaki lands - Grivances of land holders - Letters from K.R. Karant Avl. and from the Honorary Secretary, Kanara Land Holders Association- Special Settlement Officer's report submitted.

Board's Reference G.No. 4295-28-1, dated 1-10-1928.

I submit herewith the letter R.O.C.No.524/B & C-28-1 dated 9-11-1928 from the Special Settlement Officer No.4 Party Cannanore with my remarks below.

2. It is clear from the Special Settlement Officer's letter that the Settlement staff has throughout worked accordin to the District practice which was duly communicated to the Special Settlement Officer.

3. The question of assignment of kumaki Housesites and the levy of back assessment thereon was clearly dealt with in the Collector's Circular R.C.9263-1926 dated 15-2-27. I enclose a copy of this Circular. There were no complaints of any kind from the ryots at any time against the actual working of this Circular. I am afraid the Association is under some misapprehension in the matter.

4. The procedure regarding the assignment of kumaki enclosures and the ~~copy~~ levy of back assessment thereon has been laid down in this office Circular K.Dis.5078-28 (copy enclosed It is only the post settlement kumaki enclosures made without permission that were charged back assessment from the year of occupation. ~~No~~ back assessment has been charged in the case kumakis enclosed before settlement or with permission after

4559

settlement as contemplated in G.O.No.2168 Rev. dated 8-8-1908. Instances of permitted kumaki enclosures having been treated as unpermitted, owing to their having been repaired must be very rare. This is a question of fact in each case. The Association have not quoted any specific instances of the kind. Even if there are such instances the ryots could have stated their cases to the Special Settlement Officer and if the decision went against them, they could have sought relief in appeal to the Collector as there is a right of appeal.

Your obedient servant,

For Collector.

30/10/28

R.O.C.9263-26-A5. ~~16~~ 18

Proceedings of the Collector of South Kanara, Dated, 15-2-1927.

G. M. Wells, Esquire, L.A., I.C.S.

Assessment - back - levy -instructions.

In supersession of this office Circular Dis.No.2082 I Rev 17 dated 12-7-17, D.Dis.1975-21-V2 dated 20-4-21 and Rc. 8570-25-A5 dated 25-2-26, the following instructions are issued for the levy of back assessment in darkhast and other cases.

2. There is no limitation to the recovery of revenue or cesses due to Government. The term for which back assessment or cesses may be claimed should be decided according to the merits of each case, -vide B.P.78 L.Rev. dated 8-4-1909 communicated with this office endorsement Dis. 251 R/Rev.09 dated 4-5-09.

3. In the case of house sites on kumakies assessed at garden rates of assessment the maximum period for which back assessment should be levied is 10 years.-vide B.P.No. Mis.826,Rs. dated 11-4-1917 communicated with this office endorsement Dis.7032 D/Rev.17 dated 17-4-1917.

4. In cases where the adangal rate of assessment is charged, if the party's own case is that he has been in occupation from before settlement, it is obviously equitable to make him pay the back assessment from the time of settlement. If he says twelve years back assessment should be charged for twelve years, if it cannot be proved from the age of trees etc that the period of occupation have been longer. In contested cases where the Revenue authorities opine that the occupation is more than ten years but cannot prove it while the party says that it is less, back assessment should not be charged for more then 10 years.

Sd/- G. W. Wells,

Collector.

To

All Divisional Officers, Tahsildars and Dy.Tahsildars.
Copy to Jamabandi stock file, A1, and A6 and the Huzur Sheriste

A1
30-11-28.

20

R.Dis. 5078-28-A5.

Proceedings of the Collector of South Kanara, dated 13th June, 1928.

C. G. Herbert, Esquire, M.A., I.C.S.

Kumaki enclosures - Levy of back assessment - Instructio

The instructions for the levy of back assessment issued para 4 of this Office Proceedings R.O.C.9263-26-A5 dated 15-2-27 are not applicable to kumaki lands within presettleme kumaki enclosures. Kumakis within presettlement kumaki enclosures are exempt from back assessment. All kumakis with post-settlement kumaki enclosures are liable to the levy of back assessment for the period of occupation unless the party proves that the enclosure was put up after obtaining permission.

2. In cases where the date of the enclosure is doubtful evidence oral or documentary the nature of enclosure and the size of the trees conserved by it should be taken into consideration in deciding whether it is a pre or post-settlement one.

Sd/- C.G.Herbert,
Collector.

To
All Divisional Officers, Tahsildars and Dy.Tahsildars.
Copy to Jamabandi stock file A1 and A6.

R. F. XXII-A-19.—22,004—1-2-28. (6)

Subject.— 21

FOR MEMBER.

Survey. Resurvey. South Kanara Dt. Kumalki lands Grievances of Land holders. Memorial - Report submitted

READ AGAIN B. P. No. _____ dated _____ 192

" " " _____, " _____ 192

READ ALSO :— 8. plc

Register No. 4295-2, from the _____, No _____, dated _____ 192

" _____ " " _____, " _____ " _____ 192

" " _____ " 3.25 lakhs 2201 _____, " _____, " _____ 192

Resolution dated 7.3.29

Ref.

RESOLUTION. No. 4295-28-2, dated 23.1. 1929.

With reference to the memorandum from the Govt read above the Bd begs to submit Copies of the report received from the S.S.O. No IV para and the Collector of South Kanara and to state as follows on several points contained in memorandum

2 The S.S.O. reports that ~~[illegible]~~ back assessment is levied in cases of pucca settlement ~~taking~~ erected without permission ~~[illegible]~~ laid down in G.O. 2166 Rev & 8.8

As regards the period for the

such back assessment is levied
the S.S.O. in para 6 of his letter states
that ordinarily the period is limited
ten years and that the only
exceptions to this rule are where
the occupier admits that he
has been in occupation for a longer
period or where there is absolutely
indisputable evidence to prove his
occupation for a longer period. They
also add that in doubtful cases
the benefit of the doubt has been given
the ryots and that no ryot has been
unfairly treated in the matter.

Regarding the question as to
from whom back assessment is
levied the S.S.O. reports that it is
being collected from the enjoyer,
whoever he is.

on payment of back assessmen
as complained by the Association

KA
24.28.

/p. 6.

3 Para. 2 of the Govt. Memo.

A copy of Bd. mis. no
1357 dt 20-5-27 is subm^d
The Govt. order in question
was taken to apply to [redacted] Kumakis in gen
whether enclosed or no., —
was not understood as mean
that the treatment of isolated
cases which had been occupied
enclosed during the sett. period
should not be dealt with accg.
the existing practice
The S.S.O no IV Party has sinc
suggested the desirability of
coming to a settlement of
general question at once an
his suggestion has been refe
to Govt for orders on Board's
Dem— official no. 533 dt 2-10-

28/1/29

24

Q1408

Government of Madras.

Received.....1929. Registered..[illegible].....19..

9-APR.1929

bstract.

Survey - Resurvey - (South Kanara) Kumaki Lands -

Grievances of landholders - Orders passed.

Revenue Department,

G.O. Mis. No.661 dated 27th March 1929.

Read the following papers:-

G.O. No. 865 dated 7th May, 1927. 627

Not put up 2044 " 3rd September, 1928.

From T.R.Ry.K.R.Karant Avergal, T.A.,LL.B.,L.L.C., dated 13th September 1928.

From the Honorary Secretary, Kanara Landholders' Association, Mangalore, dated 20th September 1928.

Memorandum to the Board of Revenue, Land Revenue and Settlement, No.2768 E/28-1 dated 24th September 1928.

From the Board of Revenue, Land Revenue and Settlement, No.Ref.G.4295/29-2 dated 23rd January 1929.

O r d e r:-

Representations have been made by Mr.K.R.Karant, M.L.C. and by the Honorary Secretary, Kanara Landholders' Association, Mangalore,

(1) that in the South Kanara district the ryots have been forced by the Settlement Party to take Kumaki lands on assignment and

(2) that back assessment has been levied from the assignees.

In offering its remarks on these representations the Board of Revenue has suggested that orders on the general question of

the treatment, at resettlement, of kumaki lands in the South Kanara district should be issued.

2. Kumaki lands are Government waste lands lying within one hundred yards of old wargs (i.e., wargs formed prior to fasli 1276) in which the wargdar is allowed to enjoy the privileges of grazing cattle, cutting leaves, firewood and timber for his own agricultural and domestic purposes. Kumaki lands in general are not the individual property of any ryot.

3. The Government have carefully considered the representations made and now issue the following instructions in regard to the treatment at the resettlement of occupied kumakis and occupied assessed waste lands.

4. (1) No general attempt should be made at the resettlement to define the limits within which individual ryots may or do exercise their kumaki privileges or to make any assignments of kumaki land which has not been reduced to effective occupation.

(2) In areas resurveyed or to be resurveyed,

(i) Kumakis which are held under effective occupation should be assigned to the actual occupant under the orders of the Special Settlement Officer provided th there is no reasonable objection to such assignment. (See Board's Standing Order No.15(40). For the purpose of thi rule land should be deemed to have been effectively occupied when it has been brought under cultivation, has

been occupied as a house-site, planted with trees which are to be classed at the resettlement as garden products or otherwise reduced into exclusive possession, but land round which walls have been built merely for the purpose of facilitating the exercise of the normal kumaki privileges should not be deemed to have been effectively occupied

(ii) When kumaki land is assigned it should be assessed at the rate of assessment which is appropriate to its condition at the time. No back assessment should be levied and no payment demanded for the value of the land.

(iii) All back assessment and land value hitherto levied under the orders of the Special Settlement Officer on account of the assignment of kumakis should be refunded.

(iv) All persons to whom kumakis have been assigned on account solely of the existence of walls as described at the end of sub-paragraph (i) above may apply to have such assignments cancelled and the resettlement records corrected accordingly. On the assignment being cancelled, any assessment paid (including any back assessment) and any land value will be refunded. The Board of Revenue should issue instructions to the Special Settlement Officer to issue a general notification to this effect. The Officer in Charge of the Survey Party should also be instructed to notify that on receipt of orders cancelling such an assignment, any subdivision made

at the resurvey on account of the assignment will be deleted

(3) In areas resurveyed or to be surveyed, when assessed waste land is assigned it should be assessed the rate of assessment which is appropriate to its condition at time; no back assessment on land value should be levied, and all back assessment and land value hitherto levied under the orders of the Special Settlement Officer on account of the assignment of assessed wastes should be refunded.

(4) In areas where no resurvey has been made or will be made, the Special Settlement Officer should obtain from the village officers and submit to the Government, with the least possible delay, lists of unauthorised occupations of kumakis and assessed waste lands in all villages, with an estimate of their area and the assessment (the rate appropriate to their condition being assumed) that would be due on them. On receipt of this information, with the remarks of the Board of Revenue, the Government will consider further the question whether any special measures should be undertaken during the resettlement for the assignment and assessment of occupied kumakis and assessed waste lands in areas which have not been and are not to be resurveyed.

(By Order of the Governor in Council)

H.K.Pate,
Secretary to Government

To the Board of Revenue, Land Revenue and Settlement.
To M.R.Ry.K.R.Karant Avargal, M.L.C.
To the Secretary, Kanara Landholders' Association, Mangalore.

Forwarded
(By Order)

Superintendent.

Subject:- 78

R. F. XXII-A-19.—26,004-31-1-29 (6).

FOR MEMBER,

Resurvey and Result Cement.
Santi Kanara Dt. Kurnool lands assessed
Treatment. orders passed
G.O. Communicated.

READ AGAIN B. P. No. _____, dated _____ 192

" " " _____ ; " _____ 192

READ ALSO :— A. M 24-27 4

Register No. 1408-A-29, From the _____, No. _____, dated _____ 192

" " _____, " " _____, " _____, " _____ 192

" " _____, " " _____, " _____, " _____ 192

RESOLUTION. Mis No. 1012, dated 8-6- 1929.

Communicated to the Collector of Santi Kanara; the Director of Survey and the S. S.o. No IV party.

2 The Board invites the attention of the S.S.o. and the D.S. to paragraph 4 (2)(IV) of the G.O. and they are requested to take the necessary steps to carry out the instructions of the Govt. The attention of the S.S.o is also drawn to paragraph 4 (4) of the G.O. and he is requested to submit the list called for by the Govt as early as possible.

To Mr

Submitted.

The Collector of Santi Kanara.
The D.S.
The S.S.o. No IV party

29

Survey – Resurvey – South Kanara

Kumaki lands – grievances of

land holders

Q. – 4295 & 5498 of 28

From Govt D.O & the Coll^r of S. Kanara

The papers put up are

Q.O 2166 Rev. of 8-8-08 (P)

BP 78 L.R. of 8-4-09 (Y)

BP 826 Mis of 11-4-17 (C)

B.P 1357 Mis of 20-5-27 (X)

To 45 (Sett)

Please see the Govt Memorandum at pl c-f and the reports of the S.S.O and of the Coll^r on pp. 10 to 20 c-f

2/ Para 1. of the Govt Memorandum

read (i) – Collection of back assessment for the 'Kumaki' land enclosed by walls for 25 years

In para 6 of his report the S.S.O says that the period is ordinarily limited to 10 years in accordance with the orders conveyed in B.P no 78 of 8-4-1909 (Y). The only exceptions to this principle are said to be (a) cases where the occupier admits that he has been in occupation for

a longer period and (b) cases where there is absolutely indisputable evidence such as the existence on the land of trees planted by the encroacher the age of which makes the period of his occupation clear Mr Mac Ewen also asserts that no ryot has been unfairly treated in this matter

Point (ii) (1) From whom and under what circumstances back assessment has been collected

The S.S.C explains ~~this~~ (procedure) clearly in para 8 of his letter on p 15 C.F The procedure adopted seems to be in accordance with the orders existing in the matter

(2) Whether 'Kumaki' lands are assigned compulsorily to ryots whether by way of resurvey or by the initiation of fresh darkhast proceedings

From para 7 of the S.S.C's report on pp 14 & 15 C.F it will be seen that there has been no such compulsory assignment It is stated that post settlement encroachments made without permission as contemplated in G.O No. 2166 Rev, dated 8-8-08 (P) are, however, assigned on payment of back assessment

The Coll^r of South Kanara states that the Settlement staff has throughout worked according to the instructions issued by the Collector the circulars of instructions issued by the Coll^r are at pp 18 to 20 C.P. These instructions seem to be in accordance with the orders of Board and Govt

AG 6/12/28
Cos
5-12-28
8.12.28
10.12.28

Para. 2 of the fort^t Memo.

In fo: no. 86 S^t Rev. of 7-5-27 the consideration of the question of assessing Inamdar lands was ordered to be postponed until the submission of the resettlement reports. The fo: was simply communicated to the J.S.O. & the Coll^r. ~~asking the former to~~ and the former was called to consider the question in detail in the resettl. scheme reports. The J.S.O. has since suggested the desirability of coming to a settlement of the question at once, & this suggestion has been referred to fort^t for orders vide D.O. at (E) fort^t may be informed as at A

above and their attention
invited to the Board's d.o.
at (E)

JSH
11.12.28

It seems to me that no objection need be taken to the levy of such cesses, except in cases where they have been charged not for a regular occupation of the Kumaki by cultivation or garden or house but for merely enclosing them by walls. The S.S.O. regards every occupation as done with the sinister object of extending the cultivation into the Kumaki portion S.O. No. 2166 Rev. Dy 8-8-1908 (D) shows that there was some agitation of the rights in regard to the privilege of enclosing the Kumakis ~~[illegible]~~. No doubt one of the conditions on which this privilege was continued was that permission to enclose should be obtained from the Taluk. or Dy. Taluk. The only indulgence that we can possibly show now is not to regard the absence of the Taluk's or Dy. Taluk's permission to enclose as a reason for levying such cess. or assigning the Kumaki land but to continue the Kumaki privilege — whether even such the Kumaki land is enclosed ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~

The S. S. O tells that he has shown some cases to M 2.

aas
14/12

A spare copy of M 2's note (3) inspection in South Kanara is at (A). The original note is under circulation through the concerned Circle.

20
12-12-28

At the end of the C Circle at P is proposed revision by the DSO laying down the action to be taken in respect of unauthorised occupy enclosure. Remarks how the proposed effect be given effect to?

RW
14/12

JoA.S.

The Board did not submit definite amendments to B. S. Os (P) though it supported the Coll's proposal Therefore Govt did not direct that the B. S. Os should be amended. The Go Was merely communicated with (N) B. P. No. 2701 Misc Dy 8-9-1908. B.S. Os editions of 1907 + 1913 do not contain any revision It therefore appears that the proposed revision was not given effect to

SA
21.12.28

21.12.28

3.1.29.

The ways does to take up the assignment
plan on paragraph of block assessment.
It is a point that the B&O. was not
amended as proposed by the C. at p. 5 ¶(P)
Apparently the Bd + Govt. will appd of the
proposed amendment & altho' the B&O
was not received the practice apparently is
that unauthorised enclosure of Kumaki
should be dealt with under B&O 15 (old 21)
May should be assigned on A memo
& dealt with as ends on B memo 2 & 5
Cannot apparently it has been the distinct
practice to charge back assessment on
all occupation prior to assignment
I have spoke with the A.S. that where
the Kumaki has been enclosed but not cultivated
& apparently enclosed for use - Kumaki rule
- in the under where the only negligence is
the failure of the enclosure to obtain the Tal.or
Dy Tahs permission - and enclosure
if unobjectionable may be ratified by the
Rev. authority retrospectively.
I think however that the Bd. shld emphasise
that this is a concession not strictly in acc. with
the orders passed in P. vol. and that the
practice followed by the S&O. on the

KEW
5/1/24

I don't see why we should propose to obviate all the orders passed on P

Is the charge to be on unauthorized enclosures of such orders

This in accordance with the circular at p 20 ante

If the CMs order was correct, I see no reason to bar indictment now

That section there in lays down an order in Council & settlement is destroyed contrary the disobedience post an act of application by ladies who profit to act thus contrary hereby

Such evidence and seem like, requires justification

Such ~~letter~~ may not make concessions yet likes but I don't see why the BA should recommend them unless there is a good reason for doing so & I don't find any reason given in A.S.'s note at p 4 ante

WS
7/2/1

To Asst. Secretary.

please see M.2's remarks on page 7 supra.

2. With reference to the portion marked therein it is submitted that there is no definite order either of the Government or of the Board directing the legy of back assessment on mere enclosure on kumakis erected without permission, though there has been such a practice in the district. In the case of house sites on kumaki lands however the Govt. have in G.O. 969 Rev. dated 3-4-1917 approved the system of levying back assessment for ten years. Presumably the practice of levying back assessment on enclosures on kumaki erected without permission owes its origin to this G.O. (Please see the date of the first circular (12-7-1917) given in the Collector's circular at p.18 c.f.)

M.A./10-1-29
A.G.S./10-1-29.

Note by A.S (secy)

From the Collector's remarks in (P) it will be seen that a general prohibition against enclosing kumakis was never given effect to and that a large number of kumakis were in fact enclosed for strictly kumaki purposes- p.3. From the Collector's letter, on p.p. 4 and 5 it will also be seen that since the survey and settlement of the district the former objections to the ryots' enclosing their kumakis have lost much of their force. The Collector also concedes that the ryots would be able to conserve the kumakis much better if permitted to enclose them. The only possible objections to enclosing kumakis are those suggested by clauses (a),(b) and (c) on p. 3 of (P). ~~Finally,~~ Permission to enclose kumakis was ultimately given subject to certain conditions. Kumaki is a privilege conferred on the ryot. So long as the land is merely enclosed without extending cultivation into it and without the object of deriving any more advantage it than from ordinary kumaki, permission would be granted ~~granted~~ grant

as a matter of course. The penalty for not obtaining such permission has not been definitely laid down anywhere and from the facts now reported it is fairly

that no action was taken by the Revenue Dept. on most of the unpermitted enclosures. The provisions suggested in para 2 of the Collector's letter on p.5 of (P) does not seem to have been put in operation at all and it is significant that the Collector's order on p.20 c.f. specifically mentioning post-settlement kumaki enclosures is dated only 13th June 1928. G.O. No. 969 Mis. Revenue dated 3-4-1917 refers to back assessment in respect of house sites on kumakis.

I recommended the indulgence because it seemed to me unnecessry that we should penalise the ryot for the infringement of a condition when the object of the condition has not in the least been frustrated by such infringement. And such levy at the time of resettlement is particularly to be discouraged as several cases will be brought to light during resettlement inspections and the hardship to the ryots from a wholesale levy of back assessment in ~~xxxxx~~ such cases will assume an exaggerated importance. I think that exemption from the payment of back assessment in legitimate kumakis where the only defect is want of Tahsildar's or Deputy Tahsildar's permission will not be leniency either misplaced or unjustified by actual facts.

As Govt. ~~xxxx~~ only want a report as to what is being done, the Board need not recommend the concession proposed if the Commissioner is not in favour of it.

14/1/29 There were no very clear instructions as to what was to be done if kumaki was enclosed without permission + now that the question of the kumaki is raised

to be treated at the Regional Branch
the assignment of unclaimed lands not
brought under cultivation need not be
pursued It is however necessary to
emphasise — as regards homesteads
that no one who has not yet
accepted exempt on basis payment of
full value of land concerned.

Draft submitted.
28/5/49